

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CHRISTOPHER R. WATKINS)	
Claimant)	
VS.)	
)	Docket Nos. 170,894 & 175,199
SILO, INC.)	
Respondent)	
AND)	
)	
TRAVELERS INSURANCE COMPANY)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Respondent appeals from a May 23, 1994 Award entered by Administrative Law Judge Shannon S. Krysl.

APPEARANCES

The claimant appeared by his attorney, Fred A. Johnson of Wichita, Kansas. The respondent and its insurance carrier appeared by their attorney, William L. Townsley III of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, Kendall Cunningham of Wichita, Kansas.

STIPULATIONS AND RECORD

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

Respondent requests the Appeals Board to review the findings and conclusions by the Administrative Law Judge relating to:

- (1) The nature and extent of claimant's disability; and
- (2) Workers Compensation Fund liability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board finds:

- (1) From accidental injury arising out of and in the course of his employment, claimant has a thirty-six percent (36%) permanent partial general disability.

Claimant alleged and testified he suffered a low back injury on May 23, 1992 and aggravated that injury on November 25, 1992. Respondent admits personal injury by accident on the first date, May 23, 1992 only. Treatment for the May 23, 1992 injury included a laminectomy and discectomy performed by Dr. Eyster.

Dr. Eyster and Dr. Schlachter testified regarding the nature and extent of claimant's injury. Dr. Eyster rated claimant's impairment at ten percent (10%) of the body. Dr. Schlachter rated the impairment for the low back injury alone at twenty-five percent (25%) of the body but also found fifteen percent (15%) impairment or sexual dysfunction, which he attributed to the injury. Dr. Schlachter diagnosed failed back surgery. Dr. Eyster acknowledged that the results of the surgery were not ones he would classify as good and agreed that the claimant had more residual symptomatology than a lot of people do.

The central point of dispute in this case relates to the addition of impairment for sexual dysfunction. Respondent argues that the Award should be based upon Dr. Eyster's impairment rating limited to low back disability of ten percent (10%) to the body as a whole. After reviewing the record and considering the testimony of both doctors, the Appeals Board finds more convincing Dr. Schlachter's conclusion that the sexual dysfunction resulted from the injury. The Appeals Board also finds credible Dr. Schlachter's rating of that sexual dysfunction pursuant to AMA Guides. Dr. Schlachter combined the twenty-five percent (25%) for the back injury and fifteen percent (15%) for the sexual dysfunction to a resulting thirty-six percent (36%) permanent partial impairment of the body as a whole. The Appeals Board finds that thirty-six percent (36%) impairment accurately reflects the disability sustained. The Appeals Board also finds, as did the Administrative Law Judge, that the functional impairment is greater than the work disability evidenced by the vocational experts. Accordingly, the Award should be based upon the functional impairment of thirty-six percent (36%) to the body as a whole. K.S.A. 1991 Supp. 44-510e.

(2) The Appeals Board finds the Workers Compensation Fund is not liable for any portion of the Award in this case.

Respondent seeks to impose liability on the Kansas Workers Compensation Fund based upon the second alleged injury of November 25, 1992. Claimant has testified that at that time he felt he reinjured his back when he knelt down to clean or pick up a display. The medical testimony does not, however, support a claim for additional permanent disability resulting from this accident. Dr. Eyster testified that he could not say whether there was additional permanent disability from the November 25, 1992 incident. Dr. Schlachter stated his express opinion that there was not additional permanent impairment. The Appeals Board, therefore, finds that the decision by the Administrative Law Judge denying liability of the Kansas Workers Compensation Fund should be affirmed. K.S.A. 1992 Supp. 44-567.

WHEREFORE, the Appeals Board finds that the Award of Administrative Law Judge Shannon S. Krysl dated May 23, 1994 should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of June 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Fred A. Johnson, Wichita, KS
William L. Townsley III, Wichita, KS
Kendall Cunningham, Wichita, KS
Shannon S. Krysl, Administrative Law Judge
George Gomez, Director